

Message Text

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ACTION ARA-10

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FM AMEMBASSY QUITO

TO SECSTATE WASHDC IMMEDIATE 9291

INFO AMEMBASSY BOGOTA

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DEPARTMENT PLEASE PASS TO USAID

BOGOTA FOR USAID REGIONAL LEGAL ADVISOR

E.O. 11652: N/A

TAGS: APER AFSP EC

SUBJ: LOCAL PERSONNEL: USG PARTICIPATION IN GOE SOCIAL SECURITY
SYSTEM

REF: 72 STATE A-8071

1. ADMIN COUNSELOR AND POL/LABOFF MET WITH FONMIN LEGAL
ADVISOR, AMBASSADOR RAFAEL GARCIA VELASCO, MARCH 5 CONCERNING
THE DRAFT AGREEMENT BETWEEN THE EMBASSY AND ECUADOREAN
INSTITUTE OF SOCIAL SECURITY (IESS) ON THE PARTICIPATION OF
USG ECUADOREAN EMPLOYEES IN THE ECUADOREAN SOCIAL SECURITY
SYSTEM. IESS HAD PASSED THE DRAFT AGREEMENT WORKED OUT IN
NEGOTIATIONS WITH THE EMBASSY TO THE FOREIGN MINISTRY FOR
CLEARANCE.

2. AMBASSADOR GARCIA RAISED A NUMBER OF POINTS WHICH WERE
ANSWERED TO HIS SATISFACTION BY EMBOFFS. AT HIS SUGGESTION
SEVERAL NON-SUBSTANTIVE CHANGES WERE MADE IN THE DRAFT.
HOWEVER, HE OBJECTED STRONGLY TO THE LANGUAGE IN PARAGRAPH 7
OF ARTICLE II OF THE DRAFT AGREEMENT WHICH WAS INCLUDED IN
AS PARAGRAPH 6 IN ATTACHMENT TO DEPARTMENT'S REPAIR.
FOR QUICK REFERENCE QUOTED IS PARAGRAPH IN QUESTION.

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"THE RESERVATION BY THE CONTRACTING PARTIES OF CERTAIN

PRIVILEGES, IMMUNITIES AND LIMITATIONS OF LIABILITY IS FOR THE BENEFIT OF THE CONTRACTING PARTIES. EMPLOYEES OF THE UNITED STATES TO WHOM THIS AGREEMENT APPLIES SHALL HAVE NO INDEPENDENT RIGHT TO CLAIM THESE BENEFITS. EXCEPT AS OTHERWISE PROVIDED BY THIS AGREEMENT, THEIR RIGHTS AND DUTIES RELATING TO THE PARTS OF IESS MENTIONED HEREIN SHALL BE DETERMINED BY THE LAW OF ECUADOR. BENEFITS WHICH THEY MAY DERIVE OR OBLIGATIONS WHICH THEY MAY INCUR BY VIRTUE OF THIS AGREEMENT SHALL BE IDENTICAL TO THOSE OF EMPLOYEES IN PRIVATE EMPLOYMENT UNDER THE SOCIAL SECURITY LAW OF ECUADOR."

3. AMBASSADOR GARCIA BELIEVES, AND THE EMBASSY AGREES, THAT THE REFERENCED SECTION IS OBVIOUS AND UNNECESSARY AND THAT IT SHOULD BE DELETED. GARCIA SAYS THE STATEMENT IS OBVIOUS BECAUSE GOVERNMENTS CANNOT CLAIM SOVEREIGN IMMUNITIES AND PRIVILEGES FOR LOCAL EMPLOYEES. THEREFORE, TO DENY THAT WE ARE MAKING SUCH A CLAIM INCORRECTLY IMPLIES THAT WE COULD POSSIBLY MAKE SUCH A CLAIM.

4. IF THE DEPARTMENT INSISTS ON MAINTAINING SUCH A PROVISION IT WOULD BE HELPFUL TO PROVIDE THE EMBASSY WITH THE RATIONALE FOR ITS INCLUSION AND ALTERNATE LANGUAGE. HOWEVER, IF THE DEPARTMENT AGREES THAT THE PROVISION IS UNNECESSARY THE FOREIGN MINISTRY WILL CLEAR THE AGREEMENT IMMEDIATELY WITH THE MINOR CHANGES. AT THAT POINT WE WILL PROVIDE THE DEPARTMENT WITH THE TEXT OF THE COMPLETE AGREEMENT WHICH, WITH THE DEPARTMENT'S CONCURRENCE, WILL BE EFFECTED BY AN EXCHANGE OF NOTES FOLLOWING FINAL CLEARANCE BY IESS.

5. QUICK ACTION ON THIS DECISION IS URGED. AMBASSADOR GARCIA WILL DEPART THE FOREIGN MINISTRY MARCH 13 FOR ANOTHER ASSIGNMENT. IF AN ANSWER IS NOT FORTHCOMING BY THAT TIME WE WILL BE DEALING WITH HIS SUCCESSOR WHO MAY RAISE ADDITIONAL OBSTACLES.
BREWSTER

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